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EXAMINER

HEVEY, JOHN A

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1793

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Request for Reconsideration

1. Applicant's arguments filed 4/16/2009 have been fully considered but they are not persuasive.

The applicant argues that cerium content of Aozasa has a material effect on the composition and therefore does not read on the claimed composition. The applicant points to comparative example 7 of the instant specification and table 5 which compares properties of examples 6 and 7 as evidence that cerium would materially and detrimentally effect the composition. This is not found persuasive. The stated examples have a different method of making, and substantially different compositions. Aozasa teaches the use of cerium oxide is a well known additive or co-catalyst having the properties of purifying noxious components in exhaust gases (see col 1, ln 15-34). It is deemed that the addition of cerium oxide would have a well known and beneficial effect, and therefore would not materially affect the basic and novel characteristics of the claimed invention.

The reference further teaches specific embodiments, comprising zirconium, cerium and lanthanum oxide, which have a specific surface area of over 70 m²/g after 900 C calcination for 6 hours, over 50 m²/g after 1000 C calcination for 6 hours, and over 20 m²/g after 1100 C for 6 hours (see examples 1-8, Table 1). Although Aozasa does not teach the specific surface area of the material after a 10 hour calcination at 1000 C, it teaches values which are clearly equivalent to our better than required by the instant claims. In fact, the reference teaches specific surface areas of over 24 m²/g for 6 hour calcination at 1100 C

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which is considerably higher than that required by claims 24 and 25. It is therefore concluded, that the composition as taught by Aozasa would inherently possess the properties as required by claims 20-27 and 39-41.

In the alternative, as the reference teaches the same composition and substantially the same method of making, one would expect the material to have specific surfaces areas similar to that claimed. The Patent and Trademark Office can require Applicant to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on Applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 U.S.P.Q. 431 (CCPA 1977).

The applicant further argues that Aozasa in view of Yamamoto fail to teach the method as required by the instant claims. This is not found persuasive. Yamamoto et al. ("Yamamoto") teaches a method of making a zirconium-cerium oxide catalyst material comprising steps of forming an aqueous mixture of cerium nitrate and zirconium oxynitrate, adding hydrogen peroxide and ammonia, forming a precipitate, adding cationic and anionic surfactants, and calcining the resultant mixture (see Embodiment 1). Yamamoto further teaches an

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embodiment in which a mixture of a liquid component and decomposed zirconium and cerium compounds are heated, a surfactant is added to form a homogeneous precursor, and followed by a calcination (see [0066]-[0068]).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Aozasa to add a surfactant during the preparation of the zirconium oxide containing material. The use of surfactants in the preparation of catalyst or catalyst supports is well known in the art, in order to direct or enhance the structure of resulting product. In addition, Yamamoto teaches that the use of a suitable surfactant will improve the diffusion properties of the additive particles (see [0054]). Furthermore, it would have been obvious to one of ordinary skill in the art to modify the teachings of Aozasa in view of Yamamoto to perform the addition of a surfactant material before or after a heating step in order to modify the effects of the surfactant on the structure of resulting material. Thus, it is deemed that the references read on the method as claimed.

/Kevin P. Kerns/
Primary Examiner, Art Unit 1793